

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

<u>In the Matter of</u>)	
Petition for Order Declaring)	WC Docket No. 16-284
Warm Springs Telecommunications Company)	
An Incumbent Local Exchange Carrier)	
For the Warm Springs Reservation)	
In Oregon)	

**Comments of the Confederated Tribes of Warm Springs of Oregon (CTWS)
In Support of the Petition
Of the Warm Springs Telecommunications Company**

The Confederated Tribes of Warm Springs (CTWS, Tribes) files these comments in support of the Petition filed by the Warm Springs Telecommunications Company (WST) requesting that the Federal Communications Commission (Commission) designate it as the incumbent local exchange carrier (ILEC) for the Warm Springs Wire Center. The CTWS wholly owns WST. It is a tribal enterprise of the Tribes, a sovereign nation. Under federal law, the Tribes have the legal right to self-determination on its tribal lands.

I. BACKGROUND

The Confederated Tribes of Warm Springs is a federally recognized Indian Tribe located in Oregon, 104 miles south of Portland and 60 miles north of Bend. The center Agency Area of CTWS and the main community of Warm Springs straddles Hwy 26, the main north/south route through the state of Oregon to the Central Oregon communities of Madras, Redmond and Bend.

The Reservation is home to three (3) tribes: the Warm Springs, Wasco, and Paiute Tribes, which form the confederation. Reservation lands cover a little over 1,000 square miles extending from the summit of Oregon's Cascade Mountains and Mt. Jefferson on the east, to the Deschutes River, with the Metolius River and Lake Billy Chinook forming the southern boundary. The Tribes also own property in Hood River. Terrain is extremely varied, from the peak of Mt. Jefferson, and the wooded back side of Mt. Hood, to the high desert areas of the central reservation, and the deep ravines, plateaus, hills and mesas scattered through the large land mass. The reservation is difficult to serve due to the complex topography.

The reservation has only one small grocery store, three gas stations, and two small restaurants to serve the community. There is a tribal credit union, but no banks, hardware stores, barbershops, franchise restaurants, professional offices, or the myriad other small businesses that typically inhabit a community of this size. There are approximately 6,000 individuals on the reservation consisting of mainly of Tribal Members and individuals married to Tribal members.

Many tribes, including Warm Springs, were organized under the Indian Reorganization Act of 1934 (48 Stat. 984) and operate under constitutions and/or corporate charters that were approved and/or issued by the Secretary of the Interior. The CTWS obtained both a Constitution and Bylaws and a federal corporate charter under the auspices of the act.

The CTWS is referred to as a non-Public Law 280 reservation. As a general matter state law, including commercial law, does not apply on Indian reservations. Public Law 280 (28 USC § 1360) changed that situation on many reservations. However, Warm Springs was exempted from this law. As a result, in general, there is no state court forum for causes of action in which the Warm Springs Tribe or its members are parties where the cause of action arose on the Reservation.

According to the 2010 census, the Tribe has over 5,000 Tribal members. The unemployment rate varies seasonally on the Reservation, but is significantly higher than the state of Oregon or the rest of the United States. The per capita income of tribal members is estimated at \$8,163. The percentage of local Indian population below the poverty level is at least 28.4%. The Tribes access to capital is very limited.

The Tribes are governed by a Tribal Council made up of the Chiefs of each of the three tribes, who serve for life, and elected officials representing the three tribal areas of the

reservation. Each area is the home to the members of the three tribes. The Tribal Council meets regularly to discuss and vote on issues of importance to the Tribes and the tribal members.

II. LEGAL ISSUES

- a. Warm Springs Telecom worked with the Oregon PUC to define a new exchange area on the Reservation, called Wanapine, to enable all reservation residents to receive service by an Incumbent provider.
- b. Oregon PUC ruled that Warm Springs Telecom should be the Incumbent provider for Wanapine and requested that the FCC do the same as WST “is reasonable and not contrary to the public interest.”
- c. Mid-Rivers Communications set a precedent that enabled a CLEC to become an ILEC, “by rule.”
- d. Section 251(h) of the 1996 Telecom Act defines how a company can prove that it should be designated as the Incumbent ‘by rule.’ There is a three pronged test, which includes

- i. **The company occupies a market position comparable to the ILEC.**

WST shows in their Petition that it meets this criterion as it serves about 1000 customers while CL only serves about 100.

- ii. **The company has “substantially replaced” the Incumbent LEC.**

There are few Warm Springs tribal members, businesses or government agencies that now take the CenturyLink (CL) Service. With CL having only a few customers left to serve on the reservation, WST has certainly substantially replaced the Incumbent LEC. In addition, the Tribal Council passed a Resolution, which WST included in their Petition as an attachment that indicates that the Confederated Tribes of Warm Springs has directed all tribal businesses and agencies to migrate to WST.

- iii. **The reclassification serves the Public interest, convenience and necessity.**

This is most important issue that we want to emphasize on behalf of WST, and our Tribes. The Confederated Tribes of Warm Springs is a sovereign nation. Having our own Tribal Telco serves our nation in a way that no other outside company can ever serve the Public Interest, Convenience and Necessity.

Public Interest: In every way, Warm Springs Telecom serves the public interest of our community. WST works closely with the needs of the various tribal agencies. When additional phones or broadband is needed, the company services the agencies in a timely matter. It takes a phone call and within a day or two, the needs of the agency are solved. No long wait time, no holding for the next available operator. If it takes a creative solution, the WST staff is always there with an answer to help. Two years ago, the local school district and the Tribes worked together to build a new K-8 charter school on the reservation. WST provisioned all the fiber to the school and now the school children have a new school, with state of the art telecommunications like many non-tribal schools have.

When The Tribes have had forest fires, which typically is a huge problem every summer, WST has gotten together with the Fire Management staff and within a day, an entire network for the public safety is created, to enable the fire fighters to do the best job for the Tribes, saving lives and property. This never happened with CenturyLink.

WST is important to the Tribes for improving the number of jobs for our people. First, there are now new good jobs for our people in the company itself. This ranges from the technical jobs to customer service. Working through the tribal Workforce Development program, young people have been trained and then hired to work at the Tribal Telco.

In addition, having the fiber-microwave network that WST built throughout the reservation, which never existed before, we have been able to create a new business as part of a consortium of government and educational agencies to become a Federal Aviation Administration test range for Unmanned Aerial Vehicles. This new company could have only existed because the network exists. One reason that our reservation was selected to be part of this consortium is that it is a very large reservation, with very diverse land formations. With the WST network, this new company can now exist as information gathered by the drones are downloaded and sent directly through the telco's facilities to the universities and others analyzing the data. This new company is also creating new jobs and bringing additional revenue to our reservation.

Convenience: Convenience is extremely important to many of our people as the Reservation is a large reservation and many people have limited access to travel in the outside world. For the first time, the local phone company has a local office right on our reservation, with easy access for our members to visit. They can order new services or pay their bills. They also can get help to understand some new technology that is part of their service. When they call to report a problem, a technician can help quickly. That technician is often a family member or friend that they trust in their homes. This is not at all the same with past CL service.

This is the first time in our Tribal history that a company actually created this kind of center. In the past, most people would say that they would be put on hold and resolving problems were difficult. The convenience of WST is superior to anything that we have experienced in the past on the Reservation.

Necessity: The CTWS started planning for creation of a Tribal telecom company in the early 2000s when we performed a needs assessment and developed a strategic plan. We knew how important it was for the health, safety, education and economic development for our people, and that the services that we were receiving were limited, poor and very expensive.

At one point, we tried to get the incumbent company, then Qwest, to serve the Tribe with better services and expand into the unserved areas. We were told that it would cost \$1000 for a line extension charge per home. As a community with high unemployment, low income, and severe medical and health problems consuming a lot disposable income and other revenues, this financial burden would be too onerous to bear.

The Tribes need for services is a necessity, not a luxury. When we started this process, there was a general consensus that telecommunications services were only growing in importance. Tribes throughout the country were being left out, and the CTWS was not going to sit back and let the telecommunications world pass us by. We are proud to be the owners of Warm Springs Telecommunications, and we look forward to the company growing and providing new services in the future.

III. TRIBAL LAW

There are many issues that govern the relationship of the Tribes with the federal government. The two that are important in this discussion regarding the WST Petition is that of tribal sovereignty and the role of the trust relationship between the federal government and Tribes. We are not going to present a full discussion of tribal law in these comments; we only touch on legal matters which the CTWS believes govern the decision for the FCC to grant the Petition of WST. A full argument can be presented at a later date, if necessary.

- a. Tribal Sovereignty: Tribal sovereignty refers to tribes' right to govern themselves, define their own membership, manage tribal property, and regulate tribal business and domestic relations. It further recognizes the existence of a government-to-government relationship between such tribes and the federal government.

Based on federal law, the tribes are considered to be sovereign nations and to be free from state intrusion on that sovereignty. This position, first formulated by Supreme Court Justice Marshall, has been modified over the years but it continues to serve as the foundation for determining the extents and limits of Native American tribal sovereignty.

The ways that individual tribes exercise their sovereignty vary widely, but, in general, tribal authority is used in the following areas: to form tribal governments; to determine tribal membership; to regulate individual property; to levy and collect taxes; to maintain law and order; to exclude non-members from tribal territory; to regulate domestic relations; and to regulate commerce and trade.

- b. Trust relationship: Another source for the federal government's power over Native American affairs is what is called the "trust relationship" between the government and Native American tribes. This "trust relationship" or "trust responsibility" refers to legal duties, solemn and fiduciary obligations, and other understandings and expectations that have developed over the course of the relationship between the tribe and the federal government.

IV. CONCLUSION

The Confederated Tribes of Warm Springs, a sovereign tribal nation and the whole owner of the Warm Springs Telecom, supports the Petition of WST to become the ILEC for the CTWS Reservation, in Oregon. We believe that the Petition proves that WST meets all the legal requirements as indicated in the Telecom Act of 1996. In addition, The Tribes' believe that it is a great addition to the life of our tribal members. With a commitment to serve everyone on the Reservation, it has provided services to many who never previously had telephone or broadband services. Becoming an ILEC will enable WST to pursue federal USF support and low cost loans at favorable terms. This will allow WST to continue to upgrade and expand the current telecommunications network service and improve quality. Ultimately this will create new and better opportunities for our people

WST has created new good jobs and a platform for new businesses to start from and expand. It has enabled students to do homework on equal footing with their non-reservation counterparts at Madras High. It has built its network to serve our new local charter school. We are proud of the work that has been done on behalf of our tribal members, to ensure that they will not be left behind.

For all these reasons, we ask the FCC to support the Petition filed by the Warm Springs Telecommunications Company.

Signed by Tribal Council Designee:

Name 

Title SECRETARY-TREASURER

Date 10.19-16